

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL MARINO,	:	CIV. NO. 11-CV-6811
PLAINTIFF	:	
	:	
V.	:	
	:	
USHER, ET AL.,	:	
DEFENDANTS	:	

ANSWER OF FRANCIS MALOFIY TO THE PETITION FOR ATTORNEYS' FEES
AND COSTS OF JONATHAN DAVIS ON
BEHALF OF THE REMAINING DEFENDANTS

Francis Malofiy respectfully objects and excepts to the Request for Fees and Costs presented by Attorney Jonathan Davis on behalf of the Defendants against Francis Malofiy.

Mr. Stretton has the highest regard for Attorney Davis. He believes Attorney Davis is an honorable man. But, Mr. Stretton contends the fees are excessive under the circumstances. He is not disputing the hours, but disputes the need for the hours billed.

Mr. Davis' request is for \$25,853.38. His time appears to be only for the two depositions and not for the sanction hearing. That is interesting because Mr. Davis was the one who actually argued the sanction hearings.

The charge of Mr. Davis of \$25,853.38 for what was in essence a follow up deposition, seems awfully excessive. That deposition was no longer than 3 ½ hours.

Looking at the charges, there is a charge of \$11,470.00 for letter writing and phone calls in May of 2013. These fees seem very excessive and certainly can't be attributable to Mr. Malofiy. There was 7 hours spent regarding the over-all case, but that should not be included. The sanctions fees should be for the time of the deposition, not for preparing the over-all case.

The fee bills Mr. Davis are almost unreadable because they are heavily redacted.

Further, there is a charge of approximately 19.9 hours of travel for a total of \$9,950.00. This seems excessive. It would appear that Mr. Guice's deposition could have been taken in Pennsylvania. When Mr. Guice was brought in the first time, Mr. Malofiy spent \$1,594.94 for a hotel and flight cost, plus \$165.00 witness fee for Mr. Guice. That should be the benchmark. If counsel wanted to take a deposition in Denver, then Mr. Malofiy should not be charged for all these additional expenses.

Further, the preparation should have been minimal at best. This was a follow up deposition. The issues were not that complicated. The case essentially came down to what allegedly Mr. Malofiy supposedly told Mr. Guice that was the subject matter of the deposition.

The hourly rates of Mr. Davis of \$500.00 an hour and Mr. Williams of \$425.00 an hour seem very excessive under the circumstances. Clearly, Mr. Stretton is not in any way suggesting that these are not very able and talented lawyers who are entitled to fees. But in a sanctions hearing, there should not be top fees of \$500.00 and \$425.00 an hour. There is no basis or claim to justify these somewhat excessive rates and the matter of sanctions was not complex litigation.

In evaluating the sanctions, this Honorable Court should keep in mind Mr. Malofiy is a relatively young lawyer and is a sole practitioner. Awarding fees of this nature would be extremely punitive and burdensome to Mr. Malofiy and could affect his ability to continue to practice law as a sole practitioner. It is one thing to sanction someone, but it is another thing to have an extremely harsh and punitive remedy with massive monetary assessments that could have negative effects and prevent Mr. Malofiy from continuing to practice law, at least as a sole practitioner.

In conclusion, Mr. Malofiy respectfully argues that Mr. Davis' fees and costs are extremely excessive under the circumstances. This is particularly so since Judge Diamond's Order referenced only the fees for the second deposition.

In the context of the second deposition and the fact that it was only 3.5 hours in duration, it would appear that reasonable fees and expenses would be in the range of \$5,000.00.

Respectfully submitted,

s/Samuel C. Stretton
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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the Response of Francis Malofiy, Esquire to the Petition for Reasonable Attorneys' Fees, Costs and Expenses of Jonathan Davis in the captioned matter upon the following persons in the manner indicated below.

Service by First Class Mail addressed as follows:

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Respectfully Submitted,

June 18, 2014
Date

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